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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,579	11/08/2001	Kenneth Merola	J&J-2066	6614

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

GRAY, DAVID M

ART UNIT	PAPER NUMBER
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2851

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,579

Applicant(s)

MEROLA ET AL.

Examiner

Michelle Nguyen

Art Unit

2851



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed August 1, 2003 have been fully considered but they are not persuasive.

As to claim 1, applicant states that Kenet et al. (U.S. Patent No. 5,836,872) do not teach 1) which type of photographs should be used to promote a skin care product; or 2) using multiple types of photographs for the method recited in claim 1. These features are not considered because they are not recited in claim 1.

As to claim 2, applicant does not explain applicant's disagreement concerning the term "assist."

As to claims 3 and 4, applicant states that Kenet et al. do not teach taking a polarized photograph along with a standard photograph. However, this feature is not considered because it is not recited in claims 3 and 4.

As to claims 5 and 6, applicant states that Kenet et al. do not teach 1) taking an ultraviolet photograph along with a standard photograph; and 2) using such photographs in the methods of claims 5 and 6. However, these features are not considered because they are not recited in claims 5 and 6.

As to claims 7 and 8, applicant states that Kenet et al. do not teach taking an ultraviolet photograph along with a standard photograph and a polarized photograph. However, this feature is not considered because it is not recited in claims 7 and 8.

As to claims 9 and 10, applicant states that Kenet et al. do not teach 1) taking a polarized photograph along with a standard photograph; and 2) using such photographs

in the methods of claims 9 and 10. However, these features are not considered because they are not recited in claims 9 and 10.

As to claims 11-14, applicant states that Kenet et al. teaches taking an ultraviolet photograph but does not teach specifically using an ultraviolet A filter. However, ultraviolet radiation includes ultraviolet A and ultraviolet B radiation.

Applicant further states that Kenet et al. do not disclose 1) taking an ultraviolet photograph along with a standard photograph and 2) using such photographs in the methods of claims 11-14. However, these features are not considered because they are not recited in claims 11-14.

As to claims 15-18, applicant does not indicate which features Kenet et al. do not disclose, nor does applicant explain why Kenet et al. do not disclose the features of claims 15-18.

As to claims 19-22, applicant states that Kenet et al. do not teach taking multiple types of photographs of claim with a single camera within a period of less than 30 seconds. However, as explained in the previous Office action, the term "rapid succession" refers to a period of less than about 30 seconds.

In view of the foregoing, claims 1-22 remain rejected under 35 U.S.C. 102 for reasons set forth in the previous Office action and again below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,836,872 to Kenet et al.

With regard to claim 1, Kenet et al. disclose a method of promoting a skin care product, the method comprising:

taking a standard (R-G-B colors) photograph of the skin of a person (see Col. 1, lines 11-6, Col. 9, lines 6-11, Col. 26, lines 18-21, 44-7);

taking at least one additional (ultraviolet) photograph of the skin of the person, the additional photograph selected from the group consisting of an ultraviolet photograph, a blue fluorescence photograph, and a polarized photograph (see Col. 1, lines 11-6, Col. 9, lines 6-11, Col. 26, lines 18-21, 44-7);

presenting (understood) the standard photograph and the at least one additional photograph to the person (see Col. 3, lines 25-30, Col. 26, lines 49-55; Here it is understood from the terms "choice or testing of cosmetics" and "choice of a cosmetic" that the person is presented with the photographs in order to make choices relating to cosmetics to be used); and

suggesting skin care products based upon the person's review of the presented photographs (see Col. 3, lines 25-30, Col. 26, lines 49-55).

With regard to claim 2, Kenet et al. teach the method discussed above with respect to claim 1 to further comprise presenting (understood) the person with one or more questions relating to the presented photographs, wherein the suggestion of skin care products is based upon the person's answers to said one or more questions (see

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Col. 26, lines 49-55; Here it is understood that the operator assists in the choice of a cosmetic. It is further understood from the term “assist” that the operator and the person engage in an interactive discussion including questions and answers in order to make choices relating to cosmetics to be used.).

With regard to claims 3 and 4, Kenet et al. teach the methods discussed above with respect to claims 1 and 2, respectively, to comprise taking a polarized photograph (see Col. 5, line 47 to Col. 6, line 20, esp. Col. 6, lines 15-20).

With regard to claims 5 and 6, Kenet et al. teach the methods discussed above with respect to claims 1 and 2, respectively, to comprise taking an ultraviolet photograph (see Col. 9, lines 6-11).

With regard to claims 7 and 8, Kenet et al. teach the methods discussed above with respect to claims 3 and 4, respectively, to further comprise taking an ultraviolet photograph (see Col. 5, lines 47-53, Col. 6, lines 53-6, Col. 9, lines 6-11).

With regard to claims 9 and 10, Kenet et al. teach the polarized photographs discussed above with respect to claims 3 and 4, respectively, to be taken with a camera by (i) filtering light emitted from a light source with a polarizing filter and (ii) not filtering the light entering said camera with another polarizing filter prior to such light entering the camera (see Col. 6, lines 3-20; Here Kenet et al. teach including a polarization device (emphasis added).).

With regard to claims 11 and 12, Kenet et al. teach the ultraviolet photographs discussed above with respect to claims 5 and 6, respectively, to be taken by filtering

light emitted from a light source with an ultraviolet filter (see Col. 9, lines 6-11; Here it is understood that ultraviolet light includes ultraviolet A light).

With regard to claims 13 and 14, Kenet et al. teach the ultraviolet photographs discussed above with respect to claims 7 and 8, respectively, to be taken by filtering light emitted from a light source with an ultraviolet filter (see Col. 5, lines 47-53, Col. 6, lines 53-6, Col. 9, lines 6-11; Here it is understood that ultraviolet light includes ultraviolet A light).

With regard to claims 15, 16, 17 and 18, Kenet et al. teach the standard photograph and at least one of the at least one additional photograph discussed above with respect to claims 1, 2, 10 and 14, respectively, to be taken with a single digital camera (see Col. 4, lines 50-8, Col. 9, lines 11-20).

With regard to claims 19-22, Kenet et al. teach the standard photograph and the at least one additional photograph discussed above with respect to claims 14-18, respectively, to be taken within a period of less than about 30 seconds (understood) (see Col. 11, lines 26-35; Here it is understood that the term "rapid succession" refers to a period of less than about 30 seconds).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

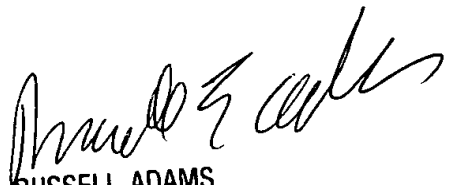
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Nguyen whose telephone number is 703-305-2771. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams can be reached on 703-308-2847. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

mpn


RUSSELL ADAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800